



**FILED**

07-12-06

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Golden State Water Company (U 133 W) for an order authorizing it to increase rates for water service by \$14,926,200 or 15.77% in 2007; by \$4,746,000 or 4.31% in 2008; and by \$6,909,300 or 6.02% in 2009 in its Region II Service Area.

Application 06-02-023  
(Filed February 24, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION OF DIVISION OF RATEPAYER ADVOCATES TO STRIKE REBUTTAL TESTIMONY**

[The following ruling was served electronically on the service list for this proceeding late in the afternoon of July 7, 2006.]

This ruling denies the written motion to strike all or portions of the rebuttal testimony of Joel Dickson (Exhibit for Identification 11) and Robert J. Sprowls (Ex. For ID 17) submitted by the Division of Ratepayer Advocates (DRA) on June 28, 2006.

**Background**

Hearings in this proceeding began on June 26, 2006. On June 28, DRA submitted a motion to strike all of the rebuttal testimony of Mr. Dickson, and portions of the rebuttal testimony of Mr. Sprowls. The rebuttal testimony of both gentlemen had been served on all parties on June 9, 2006.

In its motion, DRA argues that it has been "unfairly disadvantaged" by the quantity of the Dickson and Sprowls testimony. Not only is this testimony over 200 pages, DRA argues, but neither Dickson nor Sprowls filed any direct testimony on the issues they are now addressing. Thus, DRA concludes, it has

been “sandbagged” by this new testimony, which should be stricken pursuant to the warning issued to Golden State Water Company’s (GSWC) predecessor in Decision (D.) 04-03-039. In the alternative, DRA requests that hearings on the general office issues that the Dickson and Sprowls rebuttal addresses should be postponed for 10 business days, so that DRA will have adequate time to prepare for cross-examination.

Pursuant to an oral ruling by the undersigned at the June 28 hearing, GSWC filed a response to the DRA motion on July 5, 2006. In its response, GSWC argues that the Dickson and Sprowls rebuttal, although admittedly long, is proper because it responds to arguments made by DRA’s witness, Mehboob Aslam, in his May 25, 2006 report on general office issues (Ex. for ID 23). GSWC also notes that since the cross-examination of Messrs. Dickson and Sprowls has been postponed until July 10 and 11, 2006,<sup>1</sup> DRA will have adequate time to prepare for the cross examinations of these two witnesses.

### **Discussion**

As a general matter, the preference at the Commission is not to strike timely prefiled, written testimony. Instead, the preferred practice is to admit the testimony into the record, but then to afford it only so much weight as the presiding officer considers appropriate.

DRA argues that several factors justify an exception to the usual practice in this case. First, DRA points out that the direct testimony on the issues Dickson and Sprowls are addressing was filed by a different witness, Jenny Darney-Lane.

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<sup>1</sup> Due to the cancellation of hearings in Application 06-02-014, it was agreed on July 7, 2006 that the hearings in this proceeding scheduled for July 10 and 11 would instead be held on July 11 and 12, 2006.

Second, as noted above, DRA points out that the challenged rebuttal testimony is unusually voluminous, as is the volume of the data responses that GSWC served on Aslam in connection with this rebuttal testimony on June 23 and 24, 2006. Finally, DRA relies on D.04-03-039 to argue that this is not the first time GSWC has chosen to prejudice its opponents unfairly by putting the principal justification for large expenditures into rebuttal testimony rather than direct testimony. DRA relies upon a passage from D.04-03-039 in which the Commission criticized GSWC's predecessor for not placing the "basic justification" for a \$5 million expenditure for Customer Information Systems (CIS) software into the company's direct testimony. In concluding that the CIS software investment should not be placed in rates, the Commission said:

"This issue has also raised a concern regarding SCWC's burden in justifying its request. With the application, SCWC submitted testimony, which included a very brief description of the need for this particular project. After ORA recommended the project be rejected for lack of justification, SCWC provided a more detailed justification in rebuttal testimony. A project of this magnitude, which is in excess of \$5 million, requires more attention than what was given by the utility in initially justifying its proposed budgets. Providing the basic justification in rebuttal is unfair, since parties are not generally given the opportunity to respond to rebuttal with testimony of their own. In this case, rebuttal was issued on May 1, 2003 and hearings began on May 12, 2003. The timeframe to conduct discovery on rebuttal, even for the purpose of cross-examination, was limited. When the utility has the evidentiary burden, we caution against the use of rebuttal testimony to provide the basic justification. As a matter of fairness, we must seriously consider either striking such testimony or extending the proceeding, at the utility's risk, to allow for responsive testimony from the other parties." (D.04-03-039, *mimeo.* at 82-83; footnote omitted.)

After reviewing the parties' pleadings and the testimony at issue, I have concluded that while GSWC's handling of written testimony in this case has not

been exemplary, it has not been so egregious as to justify striking the large portions of the Dickson and Sprowls rebuttal that DRA is challenging.

First, as GSWC points out in its response, most of the Dickson testimony concerns additional positions in the general office that GSWC wants but that DRA's Aslam contends are unnecessary. GSWC notes that the justification for these new positions was set forth in the direct testimony of Jenny Darney-Lane (Ex. For ID 5), which devoted 36 pages to the subject.

An examination of the Darney-Lane direct testimony shows that while the justification for some of the contested positions was thin in comparison to the rationale for these positions set forth in the challenged rebuttal testimony, it was nonetheless sufficient to apprise Mr. Aslam of the basis for the company's request. For example, while Ms. Darney-Lane devoted only one page in her testimony (page 29) to the company's request for a tax manager in the general office (while Aslam's disallowance recommendation consumes two pages and Sprowls's rebuttal seven), the basic justification for the position is contained in the direct testimony.<sup>2</sup>

Second, it appears that one of the reasons the Dickson and Sprowls rebuttal testimony is so lengthy is that it had to be written quickly. Under the schedule being utilized in this proceeding, DRA served its reports on May 25, 2006, and GSWC was required to serve its rebuttal testimony ten business days thereafter, on June 9, 2006. It seems likely that if GSWC had had more time to prepare and edit the rebuttal testimony, it would have been shorter.

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<sup>2</sup> Similarly, while Darney-Lane devotes only one page to the need for an entry-level accountant (page 31), Aslam's disallowance recommendation consumes two pages, and Sprowls's rebuttal testimony in support of the position consumes four.

Third, much of the Sprowls rebuttal testimony that DRA has moved to strike concerns the Sarbanes-Oxley Act. Although the discussion of Sarbanes-Oxley issues in the Darney-Lane testimony was not extensive, Mr. Aslam did testify that he had read the Act and the implementing regulations thereunder. (Transcript, p. 740.) In view of this, the claims of prejudice in DRA's motion with respect to Sarbanes-Oxley compliance issues seem exaggerated.

As noted in footnote 1 of this ruling, the cross-examination of Messrs. Dickson and Sprowls on their rebuttal testimony will now take place on July 11 and 12, 2006. While this represents a postponement of less than the 10 business days DRA had requested in its motion, I agree with GSWC that it "accommodate[s DRA's] request in large measure." (GSWC Response to DRA Motion to Strike, p. 2, fn. 1.)

In view of the discussion above, **IT IS RULED** that DRA's June 28, 2006 Motion to Strike Rebuttal Testimony is denied.

Dated July 7, 2006, at San Francisco, California.

/s/ A. KIRK McKENZIE

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A. Kirk McKenzie  
Administrative Law Judge

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Dated July 12, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

## **N O T I C E**

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\*\*\*\*\* APPEARANCES \*\*\*\*\*

Kendall H. Macvey  
Attorney At Law  
BEST, BEST & KRIEGER, LLP  
PO BOX 1028  
RIVERSIDE CA 92502  
(951) 686-1450  
Kendall.MacVey@BBKlaw.com  
For: City of Claremont

Cleveland W. Lee  
Attorney At Law  
CALIFORNIA PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE, ROOM 5122  
SAN FRANCISCO CA 94102  
(415) 703-1792  
cwl@cpuc.ca.gov  
For: DRA

Keith Switzer  
GOLDEN STATE WATER COMPANY  
630 EAST FOOTHILL BLVD.  
SAN DIMAS CA 91773  
(909) 394-3600 X 759  
kswitzer@gswater.com  
For: Golden State Water Company

Patricia A. Schmiede  
Attorney At Law  
O'MELVENY & MYERS LLP  
275 BATTERY STREET, 26TH FLOOR  
SAN FRANCISCO CA 94111  
(415) 984-8715  
pschmiede@omm.com  
For: Golden State Water Company

Sharon L. Tomkins  
Attorney At Law  
O'MELVENY & MYERS, LLP  
400 SOUTH HOPE STREET  
LOS ANGELES CA 90071-2899  
(213) 430-6000  
stomkins@omm.com  
For: Golden State Water Company

\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\*

Fred L. Curry 5  
Water Division  
RM. 3106  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-1739  
flc@cpuc.ca.gov

A Kirk McKenzie  
Administrative Law Judge Division  
RM. 5115  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-4622  
mck@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

Rex Ball  
Sr/Wa, Senior Real Property Agent  
COUNTY OF LOS ANGELES  
222 SOUTH HILL STREET, 3RD FLOOR  
LOS ANGELES CA 90012  
(213) 974-4247  
rball@cao.co.la.ca.us

Dean Walker  
1701 HAWTHORNE STREET  
PACENTIA CA 92870  
Dowoodswalker@aol.com